

Message Text

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SUBJ: THE TAFT AMENDMENT

REF: (A) STATE 282968 (B) NEW DELHI 709

1. WE BELIEVE THE LETTER TO SENATOR TAFT (REF B) BY ITSELF INDICATES THAT THERE IS NO REASON TO APPLY SECTION 502 (B) (6) TO INDIA.

2. AS WE POINTED OUT IN THE FYI PORTION OF THAT MESSAGE, WE DISCUSSED THE SITUATION AT SOME LENGTH WITH MR. HOWARD M. HOLTZMANN, CHAIRMAN INTERNATIONAL ARBITRATION COMMITTEE, PAST CHAIRMAN OF THE BOARD OF DIRECTORS OF THE AMERICAN ARBITRATION ASSOCIATION (30 BROAD STREET, NEW YORK, NY 10004 TEL. 212-747-5506). MR. HOLTZMANN WAS IN NEW DELHI FOR THE FIFTH ANNUAL CONFERENCE ON ARBITRATION, AND IS NOW IN PEKING WHERE HE IS DISCUSSING INTERNATIONAL ARBITRATION PROCEDURES WITH THE PRC. HE WILL RETURN TO THE UNITED STATES BY FEBRUARY 8.

3. MR. HOLTZMANN, WHO EXPLAINS HIS INTEREST IN THE TAFT AMENDMENT SOLELY IN TERMS OF HIS PROFESSIONAL INTEREST OF MAINTAINING THE INTEGRITY AND USEFULNESS OF INTERNATIONAL ARBITRATION, TOLD AN EMBASSY OFFICER THAT HE CONSIDERED AIMING THE AMENDMENT AT INDIA TO BE COMPLETELY UNJUSTIFIED SINCE HE FINDS NO EVIDENCE THAT INDIA HAS NOT SCRUPULOUSLY OBSERVED THE TERMS OF ANY ARBITRATION PROCEEDINGS IT HAS ENTERED INTO.

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4. HOLTZMANN HAS PROVIDED US WITH THE TEXT OF THE ARBITRATION

CLAUSES IN THE CONTRACTS WHICH SENATOR TAFT REFERS TO ON PAGE S21457 (DECEMBER 13, 1974) OF THE CONGRESSIONAL RECORD. WE ARE POUCHING THIS, ALONG WITH AN EXPLANATORY NOTE PREPARED BY AN INDIAN LAWYER, WHICH HOLTZMANN ALSO FURNISHED US, TO ROBERT MORLEY, NEA/INS. HOLTZMANN TOLD US, INCIDENTALLY, THAT THE ARBITRATION CLAUSE IN THE GIRDLER-TROMBAY CASE (I.E., THE ONE THE FERTILIZER CORPORATION OF INDIA HAS TAKEN TO THE COURTS) IS UNIQUE IN THE EXTENT TO WHICH IT DRAWS ON INDIAN LEGAL PROCEDURE--I.E., BY GIVING DOMESTIC COURTS (IN THIS CASE INDIA'S) EXCLUSIVE JURISDICTION OVER ALL DISPUTES ARISING UNDER THE CONTRACT INCLUDING THOSE ARISING OUT OF ARBITRATION PROCEEDINGS.

5. MR. HOLTZMANN EXPRESSED COMPLETE WILLINGNESS TO PROVIDE FURTHER INFORMATION OR ADVICE AND IS WILLING TO BE CITED IN ANY DEALINGS WITH SENATOR TAFT ABOUT THE AMENDMENT. HE SAYS HE IS A FRIEND OF AND A LAWYER TO THE TAFT FAMILY.

6. TO OUR THINKING, THE QUESTION OF WHETHER INDIA "FAILS TO ACT IN GOOD FAITH IN RECOGNIZING AS BINDING OR IN ENFORCING ARBITRAL AWARDS..." HAS NOT YET ARISEN. TO SUM UP, WE KNOW OF NO CASE HERE TO WHICH THIS LANGUAGE MIGHT APPLY; AND ARBITRATION PROCEEDINGS, INCLUDING JUDICIAL APPEALS THEREFROM, ARE REASONABLY CONDUCTED TO THE BEST OF OUR KNOWLEDGE.
SCHNEIDER

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